

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCISCO JIMENEZ-VALERO,

Petitioner,

v.

NATHALIE ASHER, et al.,

Respondents.

NO. C16-874-TSZ

REPORT AND
RECOMMENDATION

Petitioner Francisco Jimenez-Valero, an immigration detainee proceeding through counsel in this 28 U.S.C. § 2241 habeas action, has filed an application to proceed *in forma pauperis* (“IFP”) in his appeal of the district court’s decision in the above-captioned case. Dkt. 26. The Honorable Thomas S. Zilly has referred petitioner’s IFP application to the undersigned Magistrate Judge. *Id.*

A party to a district court action who seeks to appeal IFP must first file a motion with the district court that details the party’s inability to pay, claims an entitlement to redress, and states the issues that the party intends to present on appeal. Fed. R.App. P. 24(a)(1). If the court finds the appeal frivolous, it has the power to deny leave to proceed IFP. *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). If the district court denies IFP status on appeal, the party may

1 subsequently file a motion to proceed IFP on appeal in the court of appeals. Fed. R. App. P.
2 24(a)(5).

3 Petitioner's motion to proceed IFP on appeal does not adhere to the requirements of
4 Federal Rule of Appellate Procedure 24. First, his financial statement is incomplete. *See* Dkt.
5 26-1 at 2. He indicates that he and his spouse own or have an interest in real estate, stocks,
6 bonds, notes, retirement plans, automobiles, or other valuable property, but he does not describe
7 the property or state its approximate value. *Id.* In addition, he did not declare under penalty of
8 perjury that his financial statement was correct. *Id.* Second, petitioner does not state the issues
9 he intends to present on appeal. *See* Dkts. 26 & 26-1. Because he has not explained the basis for
10 his appeal, the Court cannot determine whether his appeal is frivolous. Accordingly, petitioner's
11 motion to proceed IFP on appeal should be DENIED. A proposed Order accompanies this
12 Report and Recommendation.

13 Objections to this Report and Recommendation, if any, should be filed with the Clerk
14 and served upon all parties to this suit by no later than **January 11, 2017**. Failure to file
15 objections within the specified time may affect your right to appeal. Objections should be
16 noted for consideration on the District Judge's motion calendar for the third Friday after they
17 are filed. Responses to objections may be filed within **fourteen (14)** days after service of
18 objections. If no timely objections are filed, the matter will be ready for consideration by the
19 District Judge on **January 13, 2017**.

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1 This Report and Recommendation is not an appealable order. Thus, a notice of appeal
2 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
3 assigned District Judge acts on this Report and Recommendation.

4 DATED this 21st day of December, 2016.

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7 JAMES P. DONOHUE
8 Chief United States Magistrate Judge
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